

Chapter 22.18 – Commercial Cannabis Activity Land Use Development Ordinance

Section 22.18.010 Purpose and Intent.

This Chapter is known and may be cited as the Commercial Cannabis Activity Land Use Development Ordinance ("CCAO").

It is the purpose and intent of this Chapter to establish land use regulations for the commercial cannabis activities for cultivation of cannabis, within the unincorporated areas of Mendocino County in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within those areas by balancing the needs of medical and recreational cannabis consumers, the needs of neighbors and communities to be protected from public safety and nuisance impacts, and the need to limit harmful environmental impacts that are sometimes associated with cannabis cultivation.

Adoption of this Chapter will protect the public health, safety and welfare of the residents of the County of Mendocino by adopting regulations identifying where in the County the various types of commercial cannabis activities can occur, and specifically what type of Land Use Permit is required, the application process and required findings.

All cultivation of cannabis within the County of Mendocino, except for cultivation allowed pursuant to Chapter 9.31 or those permitted or in application under sections 10A.17.080(A)(1) or 10A.17.080(A)(2), shall comply with the provisions of the CCAO, as well as all applicable state and local laws, regardless of whether the cultivation site existed or occurred prior to the adoption of the CCAO.

Nothing in this Chapter is intended, nor shall it be construed, to:

1. Allow persons to engage in conduct that endangers others or causes a public nuisance, or
2. Allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

Nothing in this Chapter is intended, nor shall it be construed, to exempt commercial cannabis activities from compliance with all other applicable Mendocino County zoning and land use regulations, as well as other applicable provisions of the County Code, or compliance with any applicable state laws.

Nothing in this Chapter is intended, nor shall it be construed, to confer the right to create or maintain a public nuisance in the course of cultivating cannabis plants.

Nothing in this Chapter is intended, nor shall it be construed, to commercial cannabis activities from any and all applicable local and state construction, grading, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

Nothing in this Chapter is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting commercial cannabis activities.

All persons operating facilities and conducting activities associated with commercial cannabis activities, as defined in this Chapter, are subject to possible federal prosecution, regardless of the protections provided by state or local law.

Section 22.18.020 Scope

The standards of this Chapter shall apply to all land use activities associated with commercial cannabis activities for cultivation and as may be permitted in compliance with the approval of the applicable Administrative Permit or Use Permit for the listed zoning districts as shown in Appendix A.

Section 22.18.030 Incorporation of State Regulations

The provisions of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Division 10, Chapter 1 (commencing with section 26000) of the California Business and Professions Code) and Title 3, Division 8, Chapter 1 (commencing with section 8000) of the California Code of Regulations as those provisions may be amended from time to time, are made a part of this Chapter by reference with the same force and effect as if the provisions therein were specifically and fully set out herein, excepting that when the provisions of this Chapter are more restrictive than correlative State provisions, this Chapter shall prevail.

Section 22.18.040 Exemptions

- (A) Except as provided for by this Section, commercial cannabis activities for cultivation shall be allowed only following the issuance of a Land Use Permit pursuant to the provisions of this Chapter and Section 20.192 – Administrative Permits of Title 20, Division I of the Mendocino County Code or a Use Permit pursuant to the provisions in Section 20.196 – Use Permits of Title 20, Division I of the Mendocino County Code and State Commercial Cultivation License pursuant to the provisions of this Chapter.
- (B) Qualified patients, persons with an identification card or primary caregivers cultivating cannabis are exempt from the permit requirements of paragraph (A) of this Section, subject to the following requirements:
 - (1) Any and all cannabis cultivated by a qualified patient or person with an identification card shall be for the sole and exclusive use by the patient only; such cannabis may not be provided, donated, sold or distributed to any other person. A maximum of one hundred (100) square feet of medical cannabis may be cultivated on a legal parcel by a qualified patient or patients.
 - (2) Any and all cannabis cultivated by a primary caregiver shall be for the sole and exclusive use of up to a maximum of two (2) patients which have provided written designation to the primary caregiver to provide those services; the primary caregiver may not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Health and Safety Code section 11362.765. A maximum of one hundred (100) square feet of cultivation area of medical cannabis may be cultivated by a primary caregiver for each patient they are cultivating for. A maximum total of two hundred (200) square feet may be cultivated on a legal parcel by a primary caregiver or caregivers.
 - (3) Persons eligible to cultivate cannabis under this paragraph (B) may also cultivate cannabis for adult use, but any such cannabis plants must be contained within the square footage allowed in this paragraph (B).
- (C) Individuals desiring to cultivate cannabis for adult use are exempt from the permit requirements of paragraph (A) of this section, subject to compliance with the following requirements:
 - (1) Cultivation of cannabis must occur in or on the grounds of a private residence or accessory structure, may be within one (1) or more cultivation sites, and contain no more than six (6) cannabis plants with a total plant canopy not to exceed one hundred (100) square feet.
 - (2) Cultivation of adult use cannabis under this paragraph (C) on legal parcels where medical cannabis plants are being cultivated pursuant to Chapter 9.31 shall not be used to increase the total number of cannabis plants that may be cultivated on the legal parcel,

but up to six (6) of the total allowed number of twenty-five (25) plants may be set aside as personal cultivation of adult use cannabis.

- (D) Cultivation of medical and/or adult use cannabis under paragraph (B) and (C) on legal parcels where cannabis plants are being cultivated under a Land Use Permit issued pursuant to this Chapter and a State Commercial Cultivation License is allowed, provided that the person or persons cultivating the medical and/or adult use cannabis reside on the legal parcel, the medical and/or adult use cannabis plants do not exceed one hundred (100) square feet of total plant canopy, and the medical and adult use cannabis plants shall be identified on any site plan required for a Land Use Permit required by this Chapter.
- (E) Cultivation of medical and/or adult use cannabis under paragraph (B) and (C) on any legal parcel less than ten (10) acres in size shall only be allowed indoors.
- (F) No more than one exemption under paragraph (B), (C) or (D), singularly or in combination, may be used on any legal parcel.
- (G) Cultivation of medical and/or adult use cannabis under paragraph (B), (C) or (D), singularly or in combination, is not allowed:
 - (1) Within one thousand (1,000) feet of a youth center, a school, or a park as defined herein.
 - (2) Outdoors or using mixed light within one hundred (100) feet of any occupied legal residential structure located on a separate legal parcel.
 - (3) Outdoors or using mixed light in a mobile home park as defined in Health and Safety Code Section 18214.1 within one hundred (100) feet of an occupied mobile home that is under separate ownership.
 - (4) Outdoors or using mixed light within fifty (50) feet from any adjoining legal parcel under separate ownership or access easement (whichever is most restrictive).
 - (5) Any indoor cultivation shall also comply with the building property line setback established by the zoning district in which the cultivation site is located.

Section 22.18.050 Definitions

The following definitions shall apply to this chapter, as well as those definitions stated in section 26001 of the Business and Professions Code and section 8000 of the California Code of Regulations, unless amended by this section.

- (A) "Department" or "Department of Planning and Building Services" or "The Mendocino County Department of Planning and Building Services" means the authorized representatives thereof, or such other department, division or representative as designated by the Board of Supervisors.
- (B) "Growing Cannabis Plant" means, in addition to the definitions in any other state or county law, each mature or immature plant of *Cannabis sativa* L., *Cannabis indica*, or *Cannabis ruderalis*, which has breached the surface of the soil or other media in which it is growing.
- (C) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.
- (D) "Land Use Permit" means an Administrative or Use Permit to cultivate cannabis in Mendocino County pursuant to this Chapter and Chapters 20.192 and 20.196 of Mendocino County Code.

- (E) "Park" means an area of land used for community recreation owned or operated by a public entity or a private area of land recognized as a neighborhood park utilized by youth. State or Federal designated parks and forestlands as recognized within the Mendocino County General Plan are not included within this definition.
- (F) "Permittee" means a Person issued an Administrative Permit or Use Permit to cultivate cannabis in Mendocino County pursuant to this Chapter.
- (G) "Person with an identification card" means an individual who is a qualified patient who has applied for and obtained a valid identification card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code (Section 11362.7 et seq.).
- (H) "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, for purposes of this Chapter.
- (I) "Qualified patient" or "Patient" means a person who is entitled to the protections of Section 11362.5 of the Health and Safety Code, but who does not have an identification card issued pursuant to Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Section 11362.7 et seq.).
- (J) "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed day care or preschool facility. The definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.
- (K) "Youth center" has the same meaning as in Section 11353.1 of the Health and Safety Code.

Section 22.18.060 Land Use Permit Required

Except as provided by Section 22.18.040 (Exemptions), commercial cannabis activities related to cultivation, shall be allowed only following the issuance of a State Commercial Cultivation License and an Administrative Permit pursuant to the provisions of Section 20.192 – Administrative Permits of Title 20, Division I of the Mendocino County Code, including the renewal of said Administrative Permit, or a Use Permit pursuant to the provisions in Section 20.196 – Use Permits of Title 20, Division I of the Mendocino County Code, including the renewal of said Use Permit, in compliance with requirements for the zoning district in which the cultivation site is located and as listed in Appendix A.

Section 22.18.070 Cultivation Types

Cultivation Types shall be the same as those provided in section 8201 of the California Code of Regulations, subject to the limitations in Appendix A in regards to the zoning district in which the cultivation site is located.

Section 22.18.080 Application Process

Each application for a Land Use Permit, shall be completed on form(s) and in the manner prescribed by the County of Mendocino for a commercial cultivation site(s) consistent with Chapter 20.192 (Administrative Permits) and Chapter 20.196 (Use Permits) of the Mendocino County Code. In addition to the standard information required pursuant to Chapter 20.196 (Use Permits) and Chapter 20.192 (Administrative Permits), the application shall also contain the following information:

- (A) Copies of all documentation submitted to the State as part of their application process for obtaining a State Commercial Cultivation License.

- (B) The Department may prepare a guidance document regarding additional documentation that may be required to accompany an application, such as a Biological Scoping Survey or Transportation Analysis.

Section 22.18.090 Performance Standards

All Land Use Permits subject to this Chapter shall obligate the permittee to comply with State and County Law, Zoning Setbacks, Environmental Requirements and any Standard or Special Conditions upon which the permit is issued.

Section 22.18.100 Required Findings

- (A) In addition to the mandatory findings required by Section 20.196.020, the review authority (i.e. Planning Commission, Zoning Administrator, etc.) shall make the following findings in order to approve a Land Use Permit under this Chapter:
- (1) The proposed cannabis cultivation site is in compliance with the provisions of this Chapter.
 - (2) In cases where there is no other environmentally superior cultivation site located on the same parcel, the location and operation of the cannabis cultivation site will, to the maximum extent feasible, avoid or minimize its impact on environmentally sensitive areas including hillsides exceeding fifteen (15) percent, prime soil, oak woodland, and timber resources.
 - (3) The proposed cannabis cultivation site will avoid or minimize odor and light impact on residential uses.
 - (4) There is adequate water to serve the cultivation site.
 - (5) That the vehicle trips generated from the commercial cannabis use are not beyond those generated by other similar commercial or agricultural uses, such as, but not limited to, wineries; or that the trip generations will not cause significant harm to the environment.
 - (6) For existing cultivation sites with unresolved violations related to or in support of the cannabis activities on the site that are verified as unresolved by the Department as the result of an active complaint or investigation, findings shall be made that the proposed project or use will not contribute to repeat violation on the site and the site is in compliance with all laws, rules, and regulations pertaining to land uses, building and construction, health and safety, and any other applicable provisions of this Chapter, and such violation processing fees have been paid.

Section 22.18.110 Revocation of Permit

Any of the following shall be grounds for suspension or revocation of a Land Use Permit issued pursuant to this chapter, following the procedures in Sections 20.192.060, 20.192.065, 20.196.055 or 20.196.060 of Mendocino County Code, as applicable, or if there is an immediate threat to the public health or safety, such other procedures as may be authorized by law.

- (A) Failure to comply with one or more of the terms and conditions of the Land Use Permit, the Mendocino County Code, the Mendocino County General Plan or state law or regulation.
- (B) The Land Use Permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant.
- (C) Suspension or revocation of the Land Use Permit issued under the Mendocino County General Plan.
- (D) Denial, revocation or suspension of the permittee's state cannabis license.
- (E) Failure to pay state and county taxes or fees.

- (F) Conduct related to commercial cannabis activities related to cultivation in a manner that constitutes a public nuisance, where the permittee has failed to comply with reasonable conditions to abate the public nuisance as directed by the County of Mendocino.

Section 22.18.120 Enforcement

All of the remedies provided for in this Chapter, or elsewhere in the law, shall be cumulative and not exclusive for violations of this Chapter. Violations of this Chapter include, but are not limited to failure to obtain and maintain in good standing any Land Use Permit or license required by this Chapter, compliance with any required element or condition on which a Land Use Permit was issued pursuant to this Chapter, or any violation of the provisions of this Chapter where a Land Use Permit is not required. The County may enforce this Chapter by using any applicable state or county law, including, but not limited to Mendocino County Code Chapters 1.08, 8.75 or 8.76, and may use either the administrative process to achieve code compliance or available civil remedies, such as injunctive relief.